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4 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 GREGORY O'NEAL,

7 Petitioner,

8 v.

9 WARDEN MCDONALD,

10 Respondent.

Case No. C08-5454FDB

ORDER GRANTING CERTIFICATE
OF APPEALABILITY and DENYING
LEAVE TO APPEAL IFP

11 The Court adopted the Report and Recommendation in part denying Petitioner's claim on the
12 basis of failure to exhaust rather than on the merits. Petitioner now seeks a certificate of
13 appealability and leave to proceed on appeal *in forma pauperis*. Because reasonable jurists could
14 differ on the issues resolved by this Court's Order adopting the report and recommendation, a
15 certificate of appealability will be granted. Petitioner's account statement shows regular deposits and
16 withdrawals, and Petitioner paid the filing fee when he filed his petition in this case. Leave to
17 proceed *in forma pauperis* is denied.

18 NOW, THEREFORE, IT IS ORDERED: Petitioner's Motion for Certificate of Appealability
19 [Dkt. # 34] is GRANTED; Petitioner's Motion for Leave To Appeal *In Forma Pauperis* [Dkt. # 35]
20 is DENIED.

21 DATED this 31st day of July, 2009.

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24 FRANKLIN D. BURGESS
UNITED STATES DISTRICT JUDGE